

District Judge James L. Robart

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

## SEA SHEPHERD LEGAL,

**Plaintiff,**

V.

NATIONAL OCEANIC AND  
ATMOSPHERIC ADMINISTRATION, *et al.*,

#### Defendants.

Case No. C20-1412 JLR

STIPULATED MOTION AND  
ORDER FOR RELIEF FROM 26(F)  
CONFERENCE, INITIAL  
DISCLOSURES, AND JOINT  
STATUS REPORT

Noted for Consideration:  
November 23, 2020

Plaintiff SEA SHEPHERD LEGAL (“SSL”) filed the above-captioned lawsuit under the Freedom of Information Act (“FOIA”) against Defendants NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (“NOAA”) and NATIONAL MARINE FISHERIES SERVICES (“NMFS”), seeking disclosure of certain documents. *Sea Shepherd Legal v. NOAA, et al.*, 19-cv-463-JLR is a related case before the Court.

For the reasons stated below, the parties respectfully request that the Court vacate the Rule 26 deadlines (Dkt. No. 15), and instead allow the parties to submit a joint status report within the next 60 days.

The ultimate issue in a FOIA action is whether the agency in question has “improperly” withheld agency records. 5 U.S.C. § 552(a)(4)(B); *Kissinger v. Reporters*

1    *Comm. for Freedom of the Press*, 445 U.S. 136, 150 (1980). This is typically a question  
2    of law for the Court, rather than a question of fact, and thus, “[s]ummary judgment is the  
3    procedural vehicle by which nearly all FOIA cases are resolved.” *Shannahan v. I.R.S.*,  
4    637 F. Supp. 2d 902, 912 (W.D. Wash. 2009) (quoting *Los Angeles Times Commc’ns*,  
5    *LLC v. Dep’t of Army*, 442 F. Supp. 2d 880, 893 (C.D. Cal. 2006)). The parties agree that  
6    the initial disclosure requirements of Rule 26(a)(1) and the requirements of Rule 26(f),  
7    requiring the parties to prepare a discovery plan, are not appropriate in this case at this  
8    time, as the litigation is unlikely to lead to trial, and very possibly not discovery. That  
9    being said, SSL reserves the right to request discovery should evidence of bad faith or  
10   other grounds for discovery emerge.

11        The parties intend to work cooperatively in an attempt to resolve this litigation  
12 without motion practice. Defendants intend to produce the requested documents and will  
13 discuss a production schedule with SSL's counsel. If at any time in the next 60 days it  
14 becomes apparent that resolution between the parties is not feasible, the parties will  
15 submit a joint briefing schedule to the Court.

## 16 | SO STIPULATED.

17 Dated this 23rd day of November 2020.

s/ *Brett W. Sommermeyer*  
BRETT W. SOMMERMEYER, WSBA # 30003

s/      Catherine E. Pruett  
CATHERINE E. PRUETT, WA BAR # 35140

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*Attorneys for Plaintiff*

1           **SO STIPULATED.**

2           Dated this 23rd day of November 2019.

3           *s/ Michelle R. Lambert*  
4           MICHELLE R. LAMBERT, NY # 4666657  
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11           *Attorneys for Defendants*

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15           **ORDER**  
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17           **IT IS SO ORDERED.**

18           Dated this 24th day of November 2020.

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21           JAMES L. ROBART  
22           United States District Judge  
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